

1 IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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3

4 MOHAMAD E. TAHA (Deceased), )

5 and )

6 SANA M. YASSIN, his wife, ) Case No.

7 Plaintiffs, ) 17-1174T

8 vs. )

9 UNITED STATES OF AMERICA,

10                   Defendant. )

11

12

13

14 Suite 716

15 Howard T. Markey National Courts Building

17 Washington, D.C.

18 Thursday, September 5, 2019

19 2:30 p.m.

20 Hearing

21

22 BEFORE: THE HONORABLE CHARLES F. LETTOW

23

24

25 Transcribed by: Sara J. Vance, CERT

Mohamad E. Taha, et al. v. USA

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9/5/2019

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# 1 PROCEEDINGS

$$\Omega = \{ \omega_1, \omega_2, \omega_3, \omega_4, \omega_5, \omega_6, \omega_7, \omega_8, \omega_9, \omega_{10}, \omega_{11}, \omega_{12} \}$$

3 (Proceedings called to order, 2:30 p.m.)

4 THE COURT: Good afternoon.

5 MS. KANYER: Good afternoon, Your Honor.

6 MR. TAHA: Good afternoon, Your Honor.

7 THE COURT: Thank you. It sounds like we're  
8 ready to begin, and we shall. The case before the Court  
9 this afternoon is Mohamad E. Taha and others versus  
10 [brief audio lapse] 4. We're here to address the  
11 Plaintiffs' motion for a protective order or a motion to  
12 abort their claim for tax refund if the protective order  
13 is denied. We have the Government's response, and we  
14 also have Plaintiffs' reply.

15                   Somewhat unusually, I'm going to ask Mr. Taha  
16 if you will take just a minute or so to explain the basis  
17 for your motion, although we've certainly taken a look at  
18 the papers. But if you would -- go ahead.

19 MS. KANYER: Sorry, Your Honor. I just wanted  
20 to mention that my chief, David Pincus, is also here with  
21 me.

THE COURT: Aah, good. Welcome, Mr. Pincus.

23 MR. PINCUS: Thank you, Judge Lettow.

24 THE COURT: Mr. Taha, can you just take a

25 minute or so -- not like an extended exegesis, but just

25 minute or so -- not like an extended exegesis, but just

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1 indicate what the broad basis for your motion is.

2 MR. TAHA: Well, Your Honor, the basis is  
3 really at least a couple of issues, serious issues.  
4 The first one was counsel's office harassing to my  
5 family. That was -- to me, that was serious and uncalled  
6 for. And those -- that harassment, as I mentioned it in  
7 my motion, on behalf of Plaintiffs, that harassment  
8 included several telephone calls. And those telephone  
9 calls included other phone calls that when I responded to  
10 the -- to answer the phone calls from counsel's office, I  
11 was hung up on, I don't know. That, to me, Your Honor,  
12 that is really harassing us.

13 And I have a family member who, number one, is  
14 my wife. She answers of -- of the phone call from  
15 counsel's office, and she was really furious at me why  
16 was she involved and getting questions about so-and-so,  
17 where they live, and being served subpoenas maybe in the  
18 future. And the other thing is another family member,  
19 who is in California, she was as well called for the same  
20 questioning.

21 That's why, in essence, I said I cannot expose  
22 my family to such harassment. And everything else just  
23 to recover on behalf of the Plaintiffs \$14,000. To me, I  
24 basically came to the conclusion it's not worth it at all  
25 to get my family exposed to such harassment.

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1                   The other issue is that I believed counsel's  
2 office -- or actually counsel herself -- with respect,  
3 she violated your order. Your order specifically  
4 mentioned Rules 26 through 37 to complete the discovery.  
5 And when I receive a copy of subpoenas in accordance to  
6 Rule 45, that basically prompt me -- prompted me to  
7 object to that subpoena because it's not within your  
8 rules, Your Honor. When you specifically made a  
9 clarification to my request for the discovery, you  
10 specifically said Rules 26 through 37 are the basis for  
11 the discovery.

12                  THE COURT: Thank you.

13                  And I wonder if, Ms. Kanyer, would you announce  
14 yourself as counsel for the Government.

15                  MS. KANYER: Sure, Your Honor. Elizabeth  
16 Kanyer for the United States.

17                  THE COURT: And would you please give me a  
18 minute or so's response to Mr. Taha's claims.

19                  MS. KANYER: Sure, Your Honor. You know, we  
20 object to the protective order. We view this as another  
21 missive by which Plaintiffs are attempting to foreclose  
22 our ability to conduct discovery in this case. You know,  
23 first of all, we don't believe that the subpoenas are a  
24 form of -- or we don't believe that we violated the  
25 Court's order because the subpoenas are a form of

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1 discovery.

2 Case law suggests or says that the subpoenas  
3 are a form of discovery. We cited a number of cases to  
4 Your Honor, such as Marvin Lumber and McDonald's, which  
5 collects a number of cases. Marvin Lumber described  
6 that, you know, the Rule 45 subpoenas are encompassed  
7 within the discovery rules. There's also uniformity  
8 amongst the other rules such as Rule 34 and Rule 30  
9 related to depositions as well as request for production  
10 of documents.

11 We also believe that Plaintiffs haven't shown  
12 that there was good cause for a protective order. With  
13 respect to the bonding companies, Plaintiff hasn't said  
14 anything why there's any sort of harm or undue burden.  
15 With regard to the other shareholders, we admittedly did  
16 call the shareholders to see if they would -- wanted to  
17 waive service as opposed to getting a formal processor.

18 My understanding of how it happened was that we  
19 had a list of numbers and addresses, and so we called  
20 those numbers to see whether we could get a hold of  
21 anybody. We weren't able to get a hold of anybody, so a  
22 litigation assistant, she, you know, reached out a couple  
23 of times to see so we didn't have to have people show up  
24 at their house or try to track them down. We felt like  
25 that would be more trouble. So we went about it at that

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1 route.

2                 But we don't believe at this point Plaintiffs  
3 have met their burden to show that a protective order is  
4 warranted in this case.

5                 THE COURT: Thank you. The Court notes that  
6 this is really the fourth occasion to address the  
7 discovery following -- that's needed following a Court of  
8 Appeals remand. And that discovery is necessary to  
9 address the very specific and discrete questions that the  
10 Court of Appeals raised about a potentially meritorious  
11 claim that Plaintiffs have.

12                We ought to stop this at some point and  
13 essentially go on and complete discovery. We do have a  
14 scheduling order in place that contemplates completion of  
15 discovery by the 4th -- fact discovery by the 4th of  
16 October. And we also have a trial scheduled for December  
17 9th and 10th in the Tampa area. I think we have a  
18 courtroom. I think it's in the Bankruptcy Court.  
19 Scheduling a courtroom in Tampa in December, especially  
20 early, mid-December, is not easy, and we've done it as  
21 far as I can tell.

22               So what I propose to do is address the need for  
23 completion of discovery in an expeditious manner and for  
24 preparation of trial. It should be a relatively simple  
25 trial, given the discrete issues that have been

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1 identified.

2 Mr. Taha, are you willing to -- well, let me  
3 just note also that Rule 45 is encompassed specifically  
4 within the discovery rules. It's cited there as an  
5 adjunct basically. So the objection, Mr. Taha, you have  
6 regarding that Rule 45 as being outside the discovery  
7 rules is not well taken.

8 Then let's deal with the issues of the  
9 shareholders and your response in complete form to the  
10 Government's discovery request. What do you say about  
11 that specifically?

12 MR. TAHA: Well, Your Honor, I disagree. There  
13 is nothing -- nothing that counsel requested from the  
14 bonding companies that I have not provided. There is  
15 nothing that she requested that I have not provided. If  
16 counsel wants a full copy of the complaint by the bonding  
17 companies, that can be done on the Government's cost  
18 because they are voluminous. And there is more than one  
19 complaint by bonding companies. Actually, I didn't even  
20 mention others.

21 Anyway, Your Honor, if you want to change your  
22 rules for the discovery that you issued specifically  
23 between Rules 26 through 37, of course, it's your right  
24 to do that. But I disagree to it because you were  
25 specific because when I requested a clarification for

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1       your discovery, you came back and you issued an order,  
2       and you respectfully and kindly clarified my request for  
3       the clarification to the discovery. And you specifically  
4       said 26 through 37. If you want to change that to  
5       include 45, I cannot do anything about it. It's your  
6       right, but I basically disagree with your assessment that  
7       it's part of the discovery.

8                  What is part of the discovery that is not  
9       included between the Rule 26 through 37? Subpoenas?  
10      That -- that's not -- that's not just.

11                 THE COURT: Part of the problem, Mr. Taha, is  
12       that the discovery rules in 26 through 37 make reference  
13       to and incorporate Rule 45 as an alternative means for  
14       gaining responses. Do you understand?

15                 MR. TAHA: I didn't -- I didn't -- I'm sorry, I  
16       didn't see that.

17                 THE COURT: Well, it's just an adjunct to the  
18       rules. It essentially provides an alternate route for  
19       obtaining responses. So that's why the Court sees no  
20       need whatsoever to revise or amend any of its prior  
21       orders on scheduling discovery or dealing with discovery  
22       in this case.

23                 Let's talk a little bit about the Government's  
24       proposed subpoenas to the bonding companies. Ms. Kanyer,  
25       have those subpoenas actually been issued?

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1 MS. KANYER: Those subpoenas have been issued.

2 THE COURT: Have you received responses?

3 MS. KANYER: I have received partial responses  
4 somewhat recently from those two bonding companies.

5 THE COURT: All right. When you say "partial  
6 responses," are there still matters outstanding?

7 MS. KANYER: Yes, from based on my review, they  
8 were incomplete responses to the subpoenas. So my intent  
9 is to go back, but I was awaiting this hearing before  
10 going back.

11 THE COURT: Well, that's understandable. Let's  
12 talk a little bit about the fact or not that the  
13 responses basically are intended to furnish the  
14 additional materials that Mr. Taha has not provided in  
15 response to requests to him. Is that what you're driving  
16 at?

17 MS. KANYER: Twofold. One is, yes, to get the  
18 complete documents. I believe in Plaintiffs' reply  
19 Plaintiffs said that only the first page was really  
20 necessary, and we disagree. I'd like to see the entire  
21 final judgments related to this case -- or related to  
22 that case.

23 With respect to the bonding companies, I think  
24 they directly speak to the issue of worthlessness.  
25 Plaintiffs have been alleging that the purported debt

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1       became worthless in 2004, and the bonding companies, I  
2       think, can directly speak to that. They -- you know,  
3       whether or not there were payments happening outside of  
4       the 2004 time period, I think they'll have direct  
5       information related to that as far as Atek Corporation is  
6       concerned.

7                     THE COURT: All right. Thank you.

8                     Mr. Taha, do you have any objection to the  
9       subpoenas to the bonding companies?

10                  MR. TAHA: Your Honor, she didn't -- counsel  
11      already has done that.

12                  THE COURT: Well, I understand.

13                  MR. TAHA: And my point is -- my point, Your  
14      Honor, I'm convinced that counsel is not going to get any  
15      more than what I have provided. I have provided the  
16      bonding companies' letters to the project owners to --  
17      not to release any funds to Atek Construction, that  
18      number one issue that harmed Atek Construction by the  
19      bonding company.

20                  In addition, and more essentially to that, is  
21      the bonding companies' complaints in court, and the -- in  
22      the United States District Court of California. Your  
23      Honor, I provided probably more than what the bonding  
24      companies have provided or will provide, and they're not  
25      going to give Ms. -- counsel any feedback to worthless

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1 debt that actually bonding companies have (inaudible)  
2 Atek. They're not going to admit they (inaudible) Atek.  
3 They're going to probably say -- I don't know what  
4 they're going to say. I cannot speak on their behalf,  
5 but their complaints speak for themselves, Your Honor, as  
6 far as Atek going out of business in the year 2004.

7 THE COURT: Well, if the bonding companies  
8 come up with dissimilar information, that will just,  
9 in effect, verify what you have already provided. If  
10 they come up with additional information, that might  
11 assuage the Government's concern that they don't have a  
12 full record on which to act. So the Court really takes  
13 that -- the objection to the subpoenas to the bonding  
14 companies as being unavailing.

15 Let's talk a little bit about the efforts to  
16 reach -- I take it it's yourself, Moussa Taha, and I'm  
17 going to mispronounce this name, Eyad Khalil.

18 Are those people the others that, Ms. Kanyer,  
19 you're attempting to reach?

20 MS. KANYER: Yeah, that's correct.

21 THE COURT: And on what basis are you  
22 attempting to reach them?

23 MS. KANYER: As they were former shareholders  
24 at Atek Corporation, we believe that they will have  
25 unique information related to what we view as the three

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1 issues related to the bad business debt portion, which  
2 looks at, you know, whether it's bona fide debt or a  
3 capital contribution, whether it's business bad debt or  
4 nonbusiness bad debt, and then again the worthlessness.  
5 We think that they will have direct information relating  
6 to the operations of Atek, when it went out of business,  
7 Mr. Taha -- Plaintiff Taha's role in Atek Corporation.  
8 And we think that they can speak directly to that  
9 information.

10 THE COURT: Mr. Taha, what is the basis for  
11 your objection to those contacts?

12 MR. TAHA: Your Honor, they are not relevant to  
13 the case. They aren't -- they are totally -- even if  
14 counsel succeeds in making her contacts, they know  
15 nothing about business bad debt. They wouldn't even know  
16 what business bad debt -- all they would know, Your  
17 Honor, is that Atek lost everything. That's it. And  
18 Atek filed form 1120S income tax return that shows losses  
19 -- huge losses because of the bonding company taking --  
20 takeover of Atek.

21 Again, those -- those people are not going to  
22 be able to know what business bad debt is. They know  
23 nothing about this -- this current case of Plaintiffs in  
24 requesting a claim for a tax refund. They know nothing.

25 THE COURT: Well --

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1                   MR. TAHA: So in my opinion, Your Honor, it's  
2 nothing but harassment, right or wrong, but that's what I  
3 believe we're in. The other thing, Your Honor, is -- I'm  
4 sorry, I'm a little bit getting -- I'm sorry to say I'm  
5 really frustrated, Your Honor, because this is -- I'm  
6 going -- I'm getting to the point, and I'm going to  
7 mention to you, Your Honor, is it possible that you abort  
8 the case?

9                   THE COURT: Well, you could always dismiss the  
10 case voluntarily.

11                  MR. TAHA: No, no, no. I requested an  
12 abortion.

13                  THE COURT: Well, it's not abort the case, but  
14 it's a voluntary dismissal. You could always do that,  
15 but the problem is, Mr. Taha, that you're representing a  
16 couple of people, that is Mohamed E. Taha and Sanaa M.  
17 Yassin, who have a potentially meritorious claim.

18                  MR. TAHA: That is true, Your Honor.

19                  THE COURT: What?

20                  MR. TAHA: That is true.

21                  THE COURT: Well --

22                  MR. TAHA: And I'm representing them because I  
23 felt I was -- I have been and continue to be responsible  
24 for them.

25                  THE COURT: Well, why don't you just -- you're

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1       spending -- I just offer the observation, and it's just  
2       an observation, it's not telling you what to do, but I'm  
3       suggesting that we're spending more time dealing with  
4       protective orders and blocking discovery requests and  
5       that sort of thing than we would be actually just going  
6       forward with simple discovery and then trial.

7                  This is not something that has lots of legal  
8       issues independent of factual issues. We just need to  
9       move forward on the factual issues very promptly and let  
10      the legal issues play out against the facts that are  
11      established by the fact discovery. It's that simple.  
12      It's not an astonishingly broad case.

13                 Let me ask a question. Are you a shareholder,  
14      or were you a shareholder, in Atek?

15                 MR. TAHA: Of course, Your Honor.

16                 THE COURT: Who --

17                 MR. TAHA: It's on the record.

18                 THE COURT: -- all right. Who -- do you have a  
19      relationship with Moussa Taha and Eyad Khalil? How are  
20      they related to you, if they are at all?

21                 MR. TAHA: He's related. He's one of the --  
22      he's a relative.

23                 THE COURT: He is? And --

24                 MR. TAHA: I mentioned that everyone was, Your  
25      Honor.

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1                   THE COURT: All right.

2                   MR. TAHA: I mentioned that.

3                   THE COURT: All right. And Khalil is also a  
4 relative?

5                   MR. TAHA: He -- I thought you were referring  
6 to him. You said Eyad Khalil, and he's a relative.

7                   THE COURT: Okay, that helps. Well, if they  
8 would just answer within their own personal knowledge and  
9 their knowledge of the law as well, simple subpoenas,  
10 that should suffice to eliminate any possible harassment.  
11 They really are not being, I don't think, being harassed.  
12 They're just being asked, I hope, to answer a few  
13 questions.

14                  MR. TAHA: Your Honor, when I get four or five,  
15 six phone calls, some of which I was hung up on for  
16 whatever reason because they don't want to hear me again,  
17 and my wife ended up answering one of the phone calls, my  
18 wife was not happy about getting involved and  
19 questioning.

20                  My wife and other members are -- of my family  
21 has -- they have nothing to do with the case. They  
22 have nothing to do with Atek, Your Honor, nothing. There  
23 is -- their names are not ever mentioned in any lawsuit  
24 or claims by the bonding companies.

25                  THE COURT: Let's just stop a minute.

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1                   Ms. Kanyer, are you reaching beyond the three  
2 names that you've identified in your response to Mr.  
3 Ali's motion?

4                   MS. KANYER: No. We're just anticipating  
5 issuing subpoenas to those three. I think what happened  
6 was our list of information, it had a number of different  
7 numbers on there that didn't go to voicemail. And so my  
8 understanding is that our litigation assistant who is  
9 making these phone calls, you know, was kind of hoping  
10 that one of these would actually reach somebody, and so  
11 she, I think, left voicemails but wasn't sure if that was  
12 the right contact information. And so, you know, to the  
13 extent there were multiple calls, that's why.

14                  THE COURT: All right, thank you.

15                  MR. TAHA: Your Honor, I disagree with that.  
16 That was not true, Your Honor.

17                  THE COURT: In what respect was it not true in  
18 your view?

19                  MR. TAHA: My family member, Your Honor, in  
20 California -- a family member, it's my daughter, she  
21 was contacted by Ms. -- by Ms. Kanyer's assistant, and  
22 that -- that was not what I -- that's not what I heard  
23 from Ms. Kanyer saying it as a fact. My daughter in  
24 California, she was contacted. Why did she say, no, I  
25 did not contact any other family members of Mr. Taha?

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1     She did. She -- her counsel talked to my wife.

2                         THE COURT: Well --

3                         MR. TAHA: It was a -- it was a coincidence or  
4     not, my wife beat me to the phone and she answered the  
5     phone. So that is additional to the other family member  
6     in California, Your Honor. And denying that is totally  
7     wrong.

8                         THE COURT: All right. Let's just ask Ms.

9     Kanyer, did you talk with or did someone on your behalf  
10    talk with Mr. Taha's daughter?

11                        MS. KANYER: Not that I'm aware of. We  
12    received from our librarian a list of numbers that were  
13    related to these individuals, and there were -- my  
14    recollection -- numerous numbers related to each  
15    individual. And so we attempted to reach them at a  
16    couple of the numbers that were on the list. And so I  
17    can envision how it might have happened if it was  
18    correlated to the wrong person, but it was not  
19    intended to reach anyone other than those three people  
20    we listed -- Moussa, Ali, and Eyad.

21                        THE COURT: Thank you. The Court will actually  
22    deny the motion for a protective order on that basis.  
23    There really isn't any showing of harassment. The  
24    subpoenas may be issued. We'll try to issue an order in  
25    that respect tomorrow.

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1                   What I'm concerned about is the base proof  
2 whether the Plaintiffs filed a claim for refund  
3 respecting 2003 taxes. What is the progress on that, Ms.  
4 Kanyer?

5                   MS. KANYER: I'm sorry, Your Honor, can you  
6 repeat your question? I'm not sure exactly what you're  
7 wanting us to respond to.

8                   THE COURT: Well, the base question the Court  
9 of Appeals identified and the Court had identified  
10 earlier in the proceedings in the case was whether the  
11 claimants had filed a claim for refund respecting their  
12 2003 taxes.

13                  MS. KANYER: With the IRS?

14                  THE COURT: Yes.

15                  MS. KANYER: Your Honor, we haven't received  
16 any additional information that Plaintiffs filed a claim  
17 outside of what we had received previously. Right now,  
18 we're really looking at that business bad debt deduction  
19 issue, and that's what the subpoenas have been related  
20 to. And going forward, we anticipate taking depositions,  
21 and so that's where we stand right now.

22                  I will note that because of these motions,  
23 we've lost about ten weeks where I've held subpoenas and  
24 discovery in abeyance pending the Court's ruling on these  
25 motions. So we're a little concerned with a crunch for

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1 time kind of further looking into these issues.

2 THE COURT: And the Court is really not  
3 inclined to extend the time for fact discovery any  
4 further than is specified in the scheduling order that  
5 was issued on April 16th, but let's take that as it  
6 comes.

7 Mr. Taha, how have you progressed in advancing  
8 the question whether or not a claim for refund was filed  
9 respecting the 2003 taxes?

10 MR. TAHA: Your Honor, another (inaudible) I  
11 don't know if you recall, Your Honor, I objected or I  
12 expressed a concern about concentrating this trial on the  
13 2003 claim. And you agreed to me that if 2003 claim was  
14 included in the actual 2004 claim -- 2004 claim includes  
15 both 2002 and 2003 tax refunds, excuse me. And in a way  
16 you -- you -- I don't know if it was a hint or it was a  
17 contemplation, but you, Your Honor, that you will  
18 consider the whole claim as claimed in the year 2004.  
19 And that year 2004 is a year within which the bad debt  
20 became worthless.

21 THE COURT: All right.

22 MR. TAHA: In addition to that, Your Honor --

23 THE COURT: Yes.

24 MR. TAHA: -- I refer you and counsel to the  
25 IRS letter of 2011, I believe it is February 2 --

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1       February 11 or 16, 2011, where the IRS acknowledged the  
2       2004 claim was correctly filed within the seven-year  
3       statute of limitations.

4                  THE COURT: No, you did raise the fact that a  
5       claim for refund was made by filing an amended 2004 tax  
6       return on November 1, 2009. And one of the problems is  
7       whether or not the 2004 amended tax return encompassed  
8       2003 as well, and you say it did.

9                  MR. TAHA: Absolutely, Your Honor.

10                 THE COURT: Ms. Kanyer, what is your position  
11       in that respect?

12                 MS. KANYER: Our position is that for tax year  
13       2004, my understanding is that the Federal Circuit has  
14       already affirmed your ruling that the Court doesn't have  
15       jurisdiction over a refund claim for 2004.

16                 THE COURT: That's true, but on the other hand,  
17       the question arises whether that amended return addressed  
18       2003 taxes as well.

19                 MS. KANYER: I guess I'm not understanding the  
20       distinction. And my understanding is that factually in  
21       2004, for tax year 2004, Plaintiffs attempted to file an  
22       amended return that included the amount paid for tax  
23       years 2002 and 2003.

24                 THE COURT: Yes.

25                 MS. KANYER: And in -- but the claim for refund

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1 for 2004 was dismissed for lack of jurisdiction and  
2 affirmed in the Federal Circuit. So our view would be  
3 that the tax year related to 2004 would not be at issue.  
4 And we're only looking at the tax -- or a refund claim  
5 for the 2003 tax year, which I believe is a little over  
6 \$5,000.

7 THE COURT: So you think the only amount at  
8 issue is that that was actually paid in 2003; is that  
9 correct?

10 MS. KANYER: Correct.

11 THE COURT: Well, 2002 and 2004 taxes were  
12 specifically affirmed by the Court of Appeals, so they're  
13 not at issue any longer, but we do have the interesting  
14 question whether or not the 2004 amended return wrapped  
15 in a claim for refund respecting 2003 taxes.

16 MS. KANYER: I think that's an issue that I  
17 would have to look further into because it's a little bit  
18 different, from my understanding, of the Federal  
19 Circuit's ruling.

20 THE COURT: Well, I take it Mr. Taha is saying  
21 that -- well, he is saying that Plaintiffs filed an  
22 amended 2003 tax return, and the amended return was filed  
23 November 7th, and that that also sought a refund. Is  
24 that correct, Mr. Taha?

25 MR. TAHA: Yes, Your Honor.

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1                   THE COURT: All right.

2                   MR. TAHA: Your Honor, and let me make another  
3 comment in regard to what the Federal Circuit and your  
4 Court, Your Honor, both courts, I believe they made a  
5 mistake in breaking up -- specifically the Appeals Court,  
6 specifically it broke up the claim and made the mistake  
7 in ruling that it's worth looking at 2003 only and forgot  
8 the 2002 as you denied it, or dismissed it earlier,  
9 actually dismissed both 2002 and 2003 claims filed within  
10 -- within 2004.

11                  But, anyway, when I filed a rehearing request  
12 to the Appeals Court, they did not consider it. They  
13 ignored it, and they filed the remand to your Court to  
14 take care of.

15                  THE COURT: Well, they did.

16                  MR. TAHA: In essence -- in essence, Your  
17 Honor, there is a proof that the 2004 included both  
18 years, 2002 and 2003, for \$14,127 -- or 177 dollars.  
19 There is a proof to that, and that 2004 claim, again and  
20 again, it was approved or determined by the IRS as  
21 correctly filed within the seven-year statute of  
22 limitation. I cannot keep repeating the same thing over  
23 and over because I have done it and will continue  
24 reemphasizing this fact.

25                  THE COURT: All right. The Court will allow

24

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1       you definitely to do that, Mr. Taha. That's not a  
2       problem. I'm just trying to sort out factually what's  
3       going on insofar as it's possible to do so.

4                   MR. TAHA: Yes.

5                   THE COURT: Then we have the interesting  
6       question when Atek converted, if it did, the unpaid  
7       Subchapter S dividends into a loan. And you have  
8       adverted to that, Mr. Taha. When did that occur?

9                   MR. TAHA: Your Honor, number one, there is no  
10      dividends as such.

11                  THE COURT: Well, it wasn't paid. It was  
12      declared for tax purposes. That's what I'm driving at.

13                  MR. TAHA: It was declared for tax purposes,  
14      and the Plaintiffs, Shareholder Mr. Mohamed Taha, paid  
15      his taxes due on that income that was received from Atek  
16      as a shareholder income.

17                  THE COURT: Right.

18                  MR. TAHA: I don't know if that answers your  
19      question or if I understood your question correctly.

20                  THE COURT: Well, was the unpaid amount, if you  
21      will, converted into a note --

22                  MR. TAHA: Promissory note.

23                  THE COURT: What?

24                  MR. TAHA: It was -- Atek has returned a  
25      promissory note to its shareholders for money -- for

25

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1 monies that were maintained in order to keep its  
2 operation ongoing. So it issued the promissory note for  
3 the -- for the -- for the income that  
4 shareholders received as loans to Atek.

5 THE COURT: When did that --

6 MR. TAHA: There are promissory notes.

7 THE COURT: When were those promissory notes  
8 actually issued?

9 MR. TAHA: They were issued -- Your Honor,  
10 there -- I published them several times -- or not  
11 published them, I basically -- they were part of the  
12 proof of the evidence for the bad debt.

13 THE COURT: Right, I understand that.

14 MR. TAHA: They were provided.

15 THE COURT: I just --

16 MR. TAHA: They were provided. They were --  
17 one was issued in two thousand -- I believe one -- for  
18 2002, it was issued in 2003; and for 2003, it was issued  
19 in 2004.

20 THE COURT: All right, but that's helpful.

21 And, Ms. Kanyer, you're aware of that  
22 allegation; is that correct?

23 MS. KANYER: Yes. We are aware of that  
24 allegation. You know, we still believe that this is  
25 nonbusiness debt and that the notes -- it's really a

1 capital contribution and not a bona fide debt.

2 THE COURT: That's a legal argument based on  
3 facts, but we'll have to address that when we come to  
4 trial.

5 Okay, I take it, Mr. Taha, it is possible to  
6 view Atek as a family business corporation, or a family  
7 enterprise. Is that correct?

8 MR. TAHA: Yes, Your Honor. Atek was a family-  
9 owned -- it was a private, family-owned, incorporated as  
10 an S corporation.

11 THE COURT: All right. That's something that  
12 will have to be established at trial, but you've  
13 definitely made that allegation and you've supported it.

14 Okay. I think we're ready to --

15 MR. TAHA: Your Honor?

16 THE COURT: Yes.

17 MR. TAHA: May I make one other -- just a short  
18 comment here about whether the business -- the debt was a  
19 business debt?

20 THE COURT: Certainly.

21 MR. TAHA: Did the Government provide you, Your  
22 Honor, because it did not provide me with evidence except  
23 saying and more saying and more saying, Your Honor, that  
24 the debt was nonbusiness. Did the Government provide you  
25 with evidence it was nonbusiness, Your Honor? Whereas

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1 Plaintiffs did provide the courts with preponderance of  
2 evidence for it's business bad debt, and that evidence  
3 was over a dozen documents that I provided on behalf of  
4 Plaintiffs that prove the debt was business debt because  
5 the bonding companies took over Atek and rendered Atek  
6 inoperative or whatever the term is, dissolved,  
7 dissolved. Atek was dissolved.

8 THE COURT: Right.

9 MR. TAHA: I'm sorry.

10 THE COURT: No, I understand. I think the  
11 Court understands your position.

12 MR. TAHA: I really -- Your Honor, again, there  
13 ought to be evidence of whatever the Government is  
14 alleging.

15 THE COURT: Well, we'll find out. That's part  
16 of the exercise. It's just -- let me just emphasize to  
17 both parties, we ought to have the subpoenas issued to  
18 the shareholders; we ought to get responses; we ought to  
19 have the complete responses of the bonding companies; and  
20 then we ought to move forward with the preparations for  
21 trial.

22 MS. KANYER: Your Honor, I would like -- I plan  
23 to issue a notice for -- or a notice for a deposition.  
24 My concern is just the amount of time we have left. We  
25 have less than four weeks left for getting these document

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1 responses back and scheduling depositions.

2 THE COURT: If you want an extension -- well,  
3 you might be able to get the responses back. On the  
4 other hand, a very short extension might be possible. If  
5 so, you're going to have to ask for it after you've  
6 issued the subpoenas and scheduled the depositions.

7 MS. KANYER: Okay. Understood. Thank you,  
8 Your Honor.

9 THE COURT: Thank you.

10 MR. TAHA: Your Honor, I have been -- I have  
11 been extremely -- I honestly believe, Your Honor, and --  
12 believe that I have been respectful. I have been  
13 extremely cooperative. I have been extremely  
14 volunteering in providing documents when I'm not supposed  
15 to do that as a counsel or as actually a representative.

16 THE COURT: Well --

17 MR. TAHA: But I have been cooperating with the  
18 Government.

19 THE COURT: Let me -- Mr. Taha, let me just  
20 interrupt to say, you have the burden of proof of  
21 establishing not only that a tax return -- asking for a  
22 refund, or, I'm sorry, it's not a tax return, a refund  
23 claim was filed respecting 2003, and you have the  
24 responsibility of establishing that a business bad debt  
25 was involved. And --

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1                   MR. TAHA: Absolutely, Your Honor. I agree  
2 with you.

3                   THE COURT: All right.

4                   MR. TAHA: Which I have.

5                   THE COURT: Well, but that's what I'm saying.  
6 Basically, let's just let this play out. We're taking  
7 too much time on all these preliminary matters when we  
8 just ought to address it specifically and get on with the  
9 preparations for trial. It will be a lot simpler and  
10 take less time from everyone.

11                  MR. TAHA: I have -- okay, Your Honor. I have  
12 two requests if you don't mind.

13                  THE COURT: Yes, yes. No.

14                  MR. TAHA: One request is not to harass my  
15 family.

16                  THE COURT: Well, I think Ms. Kanyer is aware  
17 of the circumstances.

18                  MR. TAHA: But counsel demands that, Your  
19 Honor, and I am willing to give you -- but I hate to do  
20 that -- I'm willing to dig out from the telephone  
21 companies all these phone calls that counsel did, or  
22 counsel's assistant did.

23                  THE COURT: Let's put that in the past and save  
24 you the time and effort in undertaking that effort.

25                  MR. TAHA: Okay.

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1                   THE COURT: It's just -- it's not going to help  
2 in the preparation of the case. Ms. Kanyer is well aware  
3 of your sensitivity.

4                   MS. KANYER: Your Honor, may I ask -- maybe  
5 just a clarifying point? We at this point don't have  
6 contact information, so we don't -- I don't want to -- I  
7 don't want to go and have to make multiple phone calls  
8 again. We're happy to get process service if that would  
9 be the most effective way of going about it, but if Mr.  
10 Taha has the information so that we can call the right  
11 person, it would be very much appreciated.

12                  THE COURT: Why don't you separately -- not on  
13 this conference or hearing -- but separately identify to  
14 Mr. Taha the persons to which you issue -- wish to issue  
15 subpoenas, and he can provide the information or not.  
16 Otherwise, you're going to have to use process service.

17                  MS. KANYER: Great. Thank you.

18                  THE COURT: Thank you.

19                  MR. TAHA: My final request, Your Honor, is it  
20 possible -- due to affordability, is it possible to have  
21 the Court issue, if you want to call it, a hard copy of  
22 this conference?

23                  THE COURT: Oh, the transcript would be  
24 available. There's no doubt about that.

25                  MR. TAHA: Yeah, but it's not affordable, Your

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1 Honor.

2 THE COURT: It isn't?

3 MR. TAHA: No.

4 THE COURT: Oh. Ms. Kanyer, do you have a  
5 view?

6 MS. KANYER: We will be requesting the  
7 transcript, and we can provide Mr. Taha with a copy.

8 THE COURT: Does that satisfy you, Mr. Taha?

9 MR. TAHA: That would be appreciated, Your  
10 Honor.

11 THE COURT: All right. That will help. Thank  
12 you, Ms. Kanyer, and thank you, Mr. Taha.

13 MR. TAHA: Thank you so much.

14 THE COURT: No, that's not a problem. And the  
15 Court appreciates the cooperation of the parties in  
16 solving that small problem.

17 Is there anything further that we can usefully  
18 address this afternoon?

19 MR. TAHA: Your Honor, I just would like to  
20 reemphasize what I have explained about counsel's contact  
21 to my family. I would like to reemphasize that, and I  
22 would not -- I know even Ms. Kanyer mentioned something  
23 in this regard, that she may refrain from contacting  
24 family members of my own.

25 THE COURT: Well, I think you can solve that

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1 problem by providing appropriate addresses and other  
2 contact information to Ms. Kanyer.

3 MR. TAHA: As long as the personnel are  
4 relevant to the case, Your Honor.

5 THE COURT: If they're shareholders, then it's  
6 allowed.

7 MR. TAHA: I'm sorry, Your Honor?

8 THE COURT: If they're shareholders or were  
9 shareholders in Atek, it's allowable.

10 MR. TAHA: My wife is not a shareholder, Your  
11 Honor.

12 THE COURT: No, I understand. I don't think  
13 Ms. Kanyer has any interest in contacting your wife.

14 MR. TAHA: Or my daughter.

15 THE COURT: Or your daughter.

16 MR. TAHA: I'll take her word and your word,  
17 Your Honor.

18 THE COURT: All right, good. We try to be  
19 responsible and otherwise address things in a manner --  
20 as a matter of justice. And I'm sure Ms. Kanyer would  
21 have the same view.

22 MS. KANYER: Your Honor, that is correct. I  
23 will note that if you look at the promissory note, there  
24 is a notary stamp by Tamara Taha, so I wouldn't say that  
25 I won't have any questions related to that, but I don't

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1 anticipate subpoenaing or taking a deposition of Ms.  
2 Taha.

3 THE COURT: All right. Thank you for the  
4 clarification.

5 Anything further, Mr. Taha?

6 MR. TAHA: No, Your Honor.

7 THE COURT: All right, thank you.

8 Ms. Kanyer?

9 MS. KANYER: Nothing from the Government, Your  
10 Honor.

11 THE COURT: Thank you. We'll try to issue an  
12 order tomorrow.

13 MS. KANYER: Thank you, Your Honor.

14 THE COURT: All right.

15 MR. TAHA: Thank you, Your Honor.

16 THE COURT: All right. Thank you, indeed.

17 (Whereupon, at 3:13 p.m., the hearing was  
18 adjourned.)

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1 CERTIFICATE OF TRANSCRIBER

2

3 I, Sara J. Vance, court-approved transcriber,  
4 certify that the foregoing is a correct transcript from  
5 the official electronic sound recording of the  
6 proceedings in the above-titled matter.

7

8

9

10 DATE: 9/16/19 s/Sara J. Vance

11 SARA J. VANCE, CERT

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